Brief of Appellees

United States Court of Appeals

for the Ninth Circuit

No. 14934

GREAT NORTHERN RAILWAY COMPANY,
a corporation,

Appellant,

vs.

LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, A VOLUNTARY ASSOCIATION AND LABOR UNION, HELEN M. BOUCHEY, INDIVIDUALLY AND AS PRESIDENT OF SAID LABOR UNION, DORIS M. TRAYNOR, INDIVIDUALLY AND AS SECRETARY OF SAID LABOR UNION, RAY F. LINDBERG, INDIVIDUALLY AND AS FINANCIAL SECRETARY OF SAID UNION, LEONA L. STEIN AND JOSEPH S. BOAGARD,

Appellees.

LEIF ERICKSON,
Attorney for Appellees

(Address: Helena, Montana)

QUESTIONS INVOLVED

(1) Does the complaint state facts warranting the issuance of a writ of injunction under the general laws applicable to injunctions?

(2) Does the National Labor Relations Board have exclusive jurisdiction of the cause? (29 U.S.C.A., Sections 151-153).

(3) Is there a labor dispute within the Norris-LaGuardia Act? (29 U.S.C.A., Sections 104-113).

The questions are raised by the Order of the District Court dismissing the action.

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JURISDICTION

This Court and the District Court have no jurisdiction. Jurisdiction of the case is in the National Labor Relations Board.

STATEMENT OF THE CASE

The complaint seeks to enjoin appellees from interfering with, delaying and preventing appellant from delivering to and receiving rail shipments from Foley's Mill and Cabinet Works in Helena, Montana. It is alleged that picketing conducted by appellees results in the refusal of the regular train crews employed by appellant, by reason of their union obligations, to spot cars billed to and to receive cars billed by the Cabinet Works. The complaint sets forth that for this reason appellant must use supervisory personnel to handle the cars to and from the Cabinet Works resulting in delay in the movements and added cost to appellant. It is also alleged that before cars are moved in and out of the Cabinet Works, police are summoned to remove the pickets.

A second cause of action for damages was dismissed by stipulation.

The District Court granted a motion by appellees to dismiss the cause of action seeking the injunction because it failed to state a claim for which relief could be granted.

SUMMARY OF ARGUMENT

(1) The facts stated in the complaint do not warrant relief to appellant even under the general laws applying to injunctions.

(2) Exclusive jurisdiction of the dispute rests in the National Labor Relations Board.

(3) The facts show a labor dispute within the Norris-LaGuardia Act.

ARGUMENT

COMPLAINT INSUFFICIENT UNDER GENERAL LAW

The Order granting the motion to dismiss the complaint contains this language:

> "However, it appears to the court to be unnecessary to decide whether or not the controversy between the defendants and the plaintiff in this case constitutes a labor dispute under the provisions of the Norris-LaGuardia Act because even if the Norris-LaGuardia Act and the Clayton Act do not apply in this case, the complaint is still insufficient under the general law relating to injunctions to warrant the issuance of an injunction as prayed for.
>
> "From the allegations of the complaint, all of which for the purposes of this motion the court must accept as true, the court is unable to find that plaintiff has suffered, or will suffer, any irreparable injuries as the result of the picketing of Foley's Mill and Cabinet Works by the defendants. The complaint shows that plaintiff has at all times been able to pick up from and make deliveries to the struck plant, albeit at extra cost. However, this extra cost apparently is simple of ascertainment, as it has been alleged in the complaint, and if the extra cost has been imposed upon plaintiff by the wrongful conduct of the defendants, or any other parties, plaintiff may recover its damages in an

action at law. In these circumstances, an injunction will not lie." (Tr. 23).

These conclusions of the Court in its order are fully supported by the allegations of the complaint. Paragraphs IX, X, XI, XII. (Tr. 7, 8, 9).

Because it so succinctly states the position taken by the appellees, we also take the liberty of quoting the following from the order of the Court:

> "The only damage which plaintiff alleged in its complaint consists of the increased costs incurred by it in bringing supervisory personnel from Great Falls to Helena to man its switch engine. It appears from the face of the complaint that this extra expense is incurred not because of any illegal picketing of defendants, but for the reason that the employees of plaintiff, in the words of the complaint, *'because of their union obligations, have invariably refused to spot cars billed to and to receive cars billed by said Foley's Mill and Cabinet Works'.* In other words, from the complaint it appears that plaintiff's regular train crew refused to spot cars billed to and received from the struck plant, *not because of the physical presence of pickets on the right of way, but only because of the existence of a picket line.* (Emphasis supplied). (Tr. 25, 26)."

The language referred to by the Court above is found in Paragraph IX of the complaint. (Tr. 7).

The District Court cites and quotes from *Great Northern Railway Company v. Local Great Falls Lodge of International Association of Machinists, No. 287, et al, 283 Fed.*

557, as authority for its conclusion that no case for injunctive relief has been stated. The Court's attention is called to the quotation from that decision at Transcript 24.

The Montana Rule on injunctions is found in *Section 93-4204, R.C.M., 1947,* reading:

> "Except where otherwise provided by the provisions of the code governing specific and preventive relief, (Sections 17-701 to 17-1101), a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:
>
> (1) Where pecuniary compensation would not afford adequate relief;
>
> (2) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
>
> (3) Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,
>
> (4) Where the obligation arises from a trust."

The most this complaint shows is that the railroad is put to a considerable amount of inconvenience in bringing supervisory personnel from Great Falls to Helena to operate the railroad equipment. At the same time, as is pointed out by the District Court, the complaint on its face shows that the extent of the damage is ascertainable and that the injury may be compensated for by an award of damages.

As pointed out in the quotation from *Great Northern Railway Company v. Local Great Falls Lodge of International Association of Machinists, supra:*

> "That the applicant is annoyed, threatened and injured will never justify a court to grant him an injunction unless these trespasses are so great that they threaten him with irreparable injuries * * *."

The order of the District Court further points out that injunction will not be granted unless there appears, "... reasonable certainty that the injunction will be effective to prevent the damage which it seeks to prevent." See *Elliot v. Amalgamated Meat Cutter sand Butcher's Workmen of America, A. F. of L., D. C. Missouri, 91 Fed. Supp. 690.* By the complaint, the train crews refuse to cross the picket line, ". . . because of their union obligations." As pointed out by the District Court, if it did issue an injunction, the order could not forbid legal picketing and so long as there was picketing the complaint makes it clear the train crews would respect the line.

Whether the facts alleged in the complaint bring this case within the Norris-LaGuardia Act, *29 U.S.C.A., Chapter 6,* or the Clayton Act, *29 U.S.C.A., Section 52,* need not be determined if the District Court was correct in concluding that no case for an injunction was stated even under the general rules.

THE COURT IS WITHOUT JURISDICTION

The brief of plaintiff is devoted almost entirely to an attempt to distinguish the facts in this case from the facts in the case of *Local Union No. 25 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and*

Helpers of America, et al, v. The New York, New Haven and Hartford Railroad Company, 76 S. Ct. 227. The distinction is attempted to be stated at pages 11 and 16 of appellant's brief. The effect of the statement is that in appellant's view, those picketing were seeking relief in that case against the Railway Company, while in the present case, there is no attempt by the picketers to seek any relief against the Railway Company, either "directly or indirectly."

The facts as they appear in the opinion in *Local Union No. 25, etc., v. The New York, New Haven, etc., Railway,* are that the railroad furnished what is referred to as a "piggy-backing" service under which truck trailers were brought to the railroad's yards by members of the union, and the trailers were then loaded on flat cars for the shipment. It was the view of the union that this reduced the amount of employment available to its members. The union attempted to get an agreement from employers of its members, the motor carriers, to cease participation in this plan. Those attempts were unsuccessful so the union started picketing the railroad yards, and persuaded their members not to load the trailers on the railroad flat cars.

The complaint alleged that the union was seeking to enforce "a boycott against" the railroad. The complaint further alleged that the picketing was an attempt to require shippers and motor carriers "to assign work to members of respondent union, and to thereby commit an unfair labor

practice * * *." Finally, the complaint alleged that the acts resulted in an unlawful secondary boycott.

In the language of the Court, the question for resolution by the Court in that case depended upon:

> "(1) Whether respondent, as a railroad subject to the Railway Labor Act may avail itself of the processes of the N.L.R.B., and
>
> "(2) If respondent may do so, was it required, in the circumstances of this case, to seek relief from that tribunal rather than from the state courts."

After pointing out that as between railroads and their employees, the Labor Management Relations Act has no application, the Court said:

> "The N.L.R.B. is empowered to issue complaints whenever 'it is charged' that any person subject to the Act is engaged in any proscribed unfair labor practice. (Sec. 10 (b)."

While no specific reference is made in the complaint in the present case to the National Labor Relations Act, if the allegations of the complaint are true, the conduct of the respondents would be proscribed by the Act. 29 U.S. C.A., Sec. 158 (b).

The gist of the decision in the Local Union No. 25 case, is stated as follows:

> "As we noted earlier, respondent's amended complaint alleged violations of the Act. Whether the Act was violated, or whether as respondent now claims it was not, is, of course, a question for the Board to de-

termine. *Even if petitioners' conduct is not prohibited by Section 8 of the Act, it may come within the protection of Section 7, in which case the state was not free to enjoin the conduct.*" (Emphasis supplied).

As may be seen, the decision in no manner rests upon any conclusion that the relief sought by the union was either directly or indirectly against the railroad. The decision is based upon a determination by the Court that whenever the question arises as to whether the conduct of those picketing would be prohibited under Section 8 (b), 29 U.S.C.A. 158 (b), or within the protection of Section 7 29 U.S.C.A., Sec. 157, of the Act, the National Labor Relations Board has exclusive jurisdiction.

In support of its position, the Court cited and quotes from *Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 481, 75 S. Ct. 480, 488.*

In the Weber case, the union involved picketed the employer because the employer entered into contracts with outside companies to do certain mill work, and the outside contractors employed members of a union other than the picketing union.

In holding that the N.L.R.B. had exclusive jurisdiction, the Court, as in the case of *Local Union No. 25, etc., vs. New York, etc. Railroad,* based its decision solely on whether the suit raises the question of whether the conduct sought to be enjoined might be either protected or proscribed by the National Labor Relations Act.

Among other things, the Court said:

> ". . . even if it were clear that no unfair labor practices were involved, it would not necessarily follow that the state was free to issue its injunction. If this conduct does not fall within the prohibition of Section 8 of the Taft-Hartley Act, it may fall within the protection of Section 7 as concerted activity for the purpose of mutual aid or protection."

Further the Court says:

> "A state may not enjoin under its own labor statute, conduct which has been made an 'unfair labor practice' under the federal statutes."

Finally the Court says:

> "Respondent itself alleged that the union conduct it was seeking to stop came within the prohibitions of the Federal Act, and yet it disregarded the Board, and obtained relief from the state court. It is perfectly clear that had respondent gone first to a federal court instead of the state court, the federal court would have declined jurisdiction, at least as to the unfair labor practices on the ground that exclusive primary jurisdiction was in the Board."

While, as we have pointed out no specific reference is made to the Taft-Hartley Act, in this complaint, the allegations raise but a single question and that is whether the conduct of appellees is either protected or proscribed, and that question cannot be determined without reference to the Taft Hartley Act.

Another case in point is *Garner v. Teamsters' Union, 346 U.S. 485, 499, 74 S. Ct. 161.*

The facts in this case cannot be distinguished from the facts in the Weber case, and in the case of Local Union No. 25 v. New York, New Haven and Hartford Railway Company. The decisions are controlling, and exclusive jurisdiction over this dispute rests in the National Labor Relations Board.

THE NORRIS-LAGUARDIA ACT AND THE CLAYTON ACT APPLY

In view of the holding in *Local Union No. 25 of International Brotherhood of Teamsters', Chauffeurs, Warehousemen's and Helpers of America v. New York, New Haven and Hartford Railway Company, supra,* and the decisions in *Weber v. Anheuser-Busch Company, supra,* we will not burden this brief with extended arguments to the effect that the facts alleged bring this case within the Norris-LaGuardia Act, but the facts bring this case within that act and the Clayton Act, prohibiting injunctions in labor disputes, except under the defined circumstances set out. 29 U.S.C.A., Sec. 101, 102, 104, 107.

One of the requirements of the Norris-LaGuardia Act, Section 107 (e) is that the complaint must allege and the Court must find: ". . . that the public officers charged with the duty to protect complainant's property, are unable to or unwilling to furnish adequate protection." Here the complaint reveals that appellant has had full cooperation

from the police department of the City of Helena, and there could be no finding that public officers had failed to protect appellant's property.

That the Norris-LaGuardia Act applies is clearly established by the following cases: *New Negro Alliance v. Sanitary Grocery, 303 U.S. 552, 78 S. Ct. 161; United States v. Hutchison, 312 U.S. 219, 61 S. Ct. 463; Milkwagon Driver's Union v. Lake Valley Farm Products, Inc., 311, U.S. 91, 61 S. Ct. 122; Apex Hosiery Company v. Leader, 310 U.S. 469, 507, 60 S. Ct. 982, 999; Bedford Cut Stone Company v. Journeyman's Stone Cutters Association, 274 U.S. 37, 47 S. Ct. 522, 54 A.L.R. 791; Green v. Oberfeldt, et al, C.A., D.C., 121 Fed. (2d) 4650; Leeway Motor Freight, Inc., et al v Keystone Freightlines', Inc., et al, CA 10, 126 Fed. (2d) 931; Lauf v. E. G. Shinner, S.W., 303 U.S. 323, 58 S. Ct. 578.*

CONCLUSION

Respondent respectfully submit:

(1) That the complaint fails to state a claim for an injunction under the general law as to injunctions;

(2) That the National Labor Relations Board has exclusive jurisdiction;

(3) That the Norris-LaGuardia Act applies and the complaint fails to state a claim for relief under that Act.

The order of the District Court should be affirmed and the appeal dismissed.

LEIF ERICKSON,

Attorney for Appellees.